CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to S. 648, the product liability bill, shall be brought to a close? The yeas and nays are required under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Texas (Mrs. HUTCHISON) is necessary absent.

I also announce that the Senator from Pennsylvania (Mr. SPECTER) is absent because of illness.

Mr. FORD. I announce that the Senator from Hawaii (Mr. INOUYE), the Senator from Maryland (Ms. MIKULSKI), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

The yeas and nays resulted—yeas 71, nays 24, as follows:

[Rollcall Vote No. 184 Leg.]

YEAS—71

Abraham	Faircloth	Lugar
Allard	Frist	Mack
Ashcroft	Glenn	McCain
Bennett	Gorton	McConnell
Bingaman	Gramm	Moynihan
Bond	Grams	Murkowski
Brownback	Grassley	Nickles
Bryan	Gregg	Reed
Bumpers	Hagel	Reid
Burns	Hatch	Robb
Byrd	Helms	Roberts
Campbell	Hutchinson	Rockefeller
Chafee	Inhofe	Santorum
Coats	Jeffords	Sessions
Cochran	Johnson	Smith (NH)
Collins	Kempthorne	Smith (OR)
Coverdell	Kerrey	Snowe
Craig	Kohl	Stevens
Daschle	Kyl	Thomas
DeWine	Landrieu	Thompson
Dodd	Lautenberg	Thurmond
Domenici	Leahy	Warner
Dorgan	Lieberman	Wyden
Enzi	Lott	

NAYS—24

Akaka	Durbin	Kerry
Baucus	Feingold	Levin
Biden	Feinstein	Moseley-Braun
Boxer	Ford	Murray
Breaux	Graham	Roth
Cleland	Harkin	Shelby
Conrad	Hollings	Torricelli
D'Amato	Kennedy	Wellstone

NOT VOTING—5

Hutchison	Mikulski	Specter
Inouye	Sarbanes	

The PRESIDING OFFICER (Mr. ROBERTS). On this vote, the yeas are 71, the nays are 24. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

PRODUCT LIABILITY REFORM ACT OF 1997—MOTION TO PROCEED

The PRESIDING OFFICER. The question is on the motion to proceed. Is there further debate on the motion?

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I ask unanimous consent to speak for twelve minutes as in the morning hour.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

(The remarks of Mr. THURMOND pertaining to the introduction of S. 2266 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. THURMOND. I yield the floor, Mr. President.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The distinguished Senator from Washington is recognized.

Mr. GORTON. Mr. President, is the business before the Senate the motion to proceed to S. 648?

The PRESIDING OFFICER. The Senator is correct.

Mr. GORTON. Mr. President, S. 648 is a bill relating to product liability reported about 1 year ago by the Senate Commerce Committee. That bill is identical or nearly identical to the product liability legislation that passed both Houses of Congress in the last Congress and was vetoed by President Clinton.

As and when the motion to proceed is agreed to, Senator ROCKEFELLER and I will propose an amendment in the nature of a substitute on the same subject, product liability, somewhat more modest in scope than the bill that was vetoed by the President. It is the result of more than 1 year of careful and detailed negotiation involving myself, other members of this party, Senator ROCKEFELLER and various of his allies, and the Office of the President of the United States.

The willingness of the President of the United States to sign a product liability bill in the form of this substitute is due to the untiring and diligent efforts of the junior Senator from West Virginia, who has literally been tireless in pursuing a solution to a question that involved his time and my time for well over a decade, and a willingness to pursue it in a White House from which a veto emanated almost 2 years ago.

The bill, of course, is not as broad as the one that was then vetoed or the bill that was passed out by the Commerce Committee. Nevertheless, it does bring a significant degree of rationality and predictability to product liability litigation. It removes a number of severe inhibitions that stand in the way of research and development for new and approved products in the commerce of the United States. That may be its most important single feature, because we have an economy in which litigation has provided a severe inhibition to the improvement of our products, to the development of new products. Perhaps the single most vivid illustration of the value of product liability litigation is in the field of piston-driven aircraft, a subject with which the Presiding Officer is more than familiar, where a limitation on product liability litigation, a modest limitation, passed half a dozen years ago, has resulted in the recovery of an industry that had almost disappeared in the United States of America. So we are not speaking about a theory when we talk about the inhibitions placed on various forms of business enterprise, industrial and otherwise, by the present state of the law varying from State to State through 50 States and several other jurisdictions.

While I would prefer broader product liability legislation, and while I believe the Senator from West Virginia might prefer it to be somewhat broader than it is at this point, this legislation nevertheless is good for the economy of the United States, and it is good for those who are injured by the actual or real negligence of manufacturers or sellers. It does, however, say that in the case of the seller, the seller is only going to be liable when the seller itself is negligent. It does put some rational basis on the award of punitive damages with an actual cap on punitive damages for modest and for small businesses. In that regard, it sets a uniform national standard for punitive damages in those States that allow punitive damages—my own, for example, does not—raising the bar to require clear, cogent, and convincing evidence for the award of punitive damages, a higher standard than exists in most States at the present time, with a cap on punitive damages for small businesses.

The National Federation of Independent Business has just come out with a study as to who is impacted by that, and while the definition of a small business in this bill is 25 employees or $5 million a year in sales, their table shows that 73 percent of all the manufacturers in the United States have fewer than 20 employees, 88 percent of all the retailers in the United States have fewer than 20 employees, and 85 percent of the wholesalers in the United States fall within the same category. So, for the vast majority of business enterprises in the United States, there will be a cap on punitive damages that is realistic in nature and is something that the business might conceivably be able to pay, rather than simply being driven out of business by such a verdict.

With respect to product sellers, it simply states that the product seller avoids liability if the product seller is not itself negligent or otherwise liable. Manufacturers, under those circumstances—since they can't be joined in litigation with the product seller—can almost always achieve what amounts to fraudulent joinder and thus get diversity of citizenship, a diversity of citizenship that allows them to get into a Federal court rather than into State courts where the great majority of notorious and unwarranted verdicts in product liability cases have taken place in the past.

Product manufacturers have been frustrated by the unavailability of a ''misuse'' defense. They have that, to a greater extent, as a result of this bill. The bill includes a statute of repose, a very modest and narrow statute of

repose but a statute of repose nevertheless, one of 18 years for durable goods used in the workplace where the plaintiff already has available to that plaintiff workers compensation or industrial insurance.

Finally, a strong biomaterials bill, particularly important, in my view, as the materials that go into implants—for example, heart monitors and the like—are often very inexpensive. They are various forms of plastic tubing and the like. Yet the biomaterials manufacturer almost always finds itself as a defendant in a product liability suit directed primarily at the manufacturer or the assembler of the implant. And the cost, in the case of many relatively large corporations, of successfully defending lawsuits based on those implants literally exceeds the total sales price of the materials that they have sold that go into those items. So a rational manufacturer of the materials that go into various very important cutting-edge medical devices—the rational manufacturer simply won't sell them. There is not much point in selling $100,000 worth of materials in a year if it is going to cost you $1 million a year successfully to defend yourself against lawsuits directed primarily at the person who has used the materials that you have manufactured.

Some of those companies have continued in the business just as a matter of being good citizens, but we cannot call on them or believe that they will continue to do so for an extended period of time. To the best of our knowledge, we do not have any who have actually lost these lawsuits, but the defense against these lawsuits is important in any event.

We have a system that is sick, a system in which the greater percentage of the money that goes into product liability litigation goes to lawyers, insurance companies, insurance agents and the like, and only a relatively modest portion of it ever gets to the actual victims of actual negligence. We have a situation in which there are highly publicized and outrageously large punitive damage awards in a handful of States of the United States, but where, in the vast majority of cases in which some at least modest compensation is due, the compensation is less than actual damages.

This bill is a modest attempt to improve the compensation system for defective products in the United States and it modestly improves it. It is a modest move in the direction of uniformity. It certainly doesn't create uniformity everywhere, but at least it is a modest step in that direction. And it is a significant step in the direction of encouraging companies to continue to be at the cutting edge of the development of new products, new products used both in the workplace and by individuals all across the United States—the kind of innovation and development which have marked the United States from the very beginning of our history and of our economy, and the kind of innovation and leadership in the world economy that is vitally important. So I hope we will be soon able to move to the bill, to pass the bill in the form as it has been worked out by the Senator from West Virginia and myself with the cooperation of the White House, its passage by the House, and its signing by the President of the United States.

I dare not say in a body like this that this issue has occupied us for more years than any other in which there has not been any actual legislation passed, but if it doesn't rank No. 1 in that score, it ranks very, very close to No. 1. We now have a real opportunity, if we are constructive, to see to it that we are modestly successful, and I hope in the course of the next week or 10 days that is exactly what we will do.

The PRESIDING OFFICER. The distinguished Senator from West Virginia is recognized.

PRIVILEGE OF THE FLOOR

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that Rosalind Wood, of my staff, be accorded floor privileges for the duration of the consideration of the pending product liability bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROCKEFELLER. Mr. President, here we are again. As always, I am very proud to be standing across the aisle from my dear colleague, Senator GORTON. Senator LIEBERMAN is very much a part of this. There are many who are very much a part of this.

I can report that we are in a position, as the Senator from Washington has indicated, to pass and to have signed a product liability bill for the first time in my living memory, at least, in the Senate. This is, I guess, my 11th year on this subject.

We have a chance to have the bill signed, however, by the President, only if we maintain the bill in its current very limited form. I, obviously, congratulate Senator GORTON—who does a prodigious job in all events—on this subject and many others, but he has also been extraordinary in the way that he has accepted and rejected and negotiated not only with myself, but also with the White House in his discussions with the majority leader to, in effect, finally bring a product liability bill to the floor which actually can pass, and if it does pass, will be signed by the President, provided that it is in its current limited form.

It is a good feeling to have a bill that can be signed. I am much more accustomed to being here promoting a bill that I know would be a good bill, but, on the other hand, which I know in the end isn't going to be signed. When you know something is going to be signed, that says two things: One is that you are dealing with some folks in the White House who have been very honorable and consistent; and, second, you have a very limited bill.

The Senator from Washington used a much more tactful phrase. He said a ''somewhat more limited bill.'' I will be more direct and say that it is a very much more limited bill. The logic for that is very simple. If it was other than its current form, we might be able to pass it, but it would not be signed. I just somehow fail to see the logic or the wisdom of, once again, passing a bill that is vetoed. I don't see the point in that. It takes up a lot of our time.

We have all worked at this for years and years. If we are going to do something, let's get what we can. I think that is one of the lessons we learned from health care reform—one which I myself did not learn easily—that when we try to do the whole job, or at least a large chunk of the job, the Congress is not willing to accept it. I now refer to myself on health care reform as a ''raging incrementalist.'' I have had to accept that position. On product liability reform, I now think the more limited approach makes a great deal more sense.

I say again to my colleagues and those who work with them, that when I say there is not a lot of room for deviation in this bill, the Senator from West Virginia really means that. This is a process in which I worked for a very long period of time negotiating with the White House, knowing that it was fruitless to come forward with a bill which would not meet with their approval. In essence, we had to look at all of those things which were displeasing to the White House last year when the veto took place and then simply excise all of those or anything related to those, and proceed to craft a bill which did not meet their objections. They were very tough about it, but they were very fair about it. They were very consistent. I really respect them for that. I can name the people who did that, and I will at the appropriate time, but I really honor them for their consistency and their willingness to let it be known where they stood.

Then, my obligation is to let my colleagues know that this is not one of those bills where we can come in and do all kinds of things to it or else it will be vetoed, and only the President holds the pen. He always does, but sometimes there is more room for movement. On this one, I think there is very little room for movement.

Senators know our legislative calendar is growing very short. That is why I have been so adamant about urging floor consideration for the reform agreement that has been reached with the White House and which will be signed if passed. Senator GORTON and I recently completed work on some technical changes which the White House had agreed to accept but, again, technical, no substantive changes. No substantive changes were contemplated by the White House; no substantive changes were agreed to by the White House, only some technical changes.

Why? Because they are the controlling element here. They are the ones who have the pen. They can veto it, or they can sign it. Therefore, their leverage is considerable. I can pretend we

are otherwise, but it doesn't do me much good. That is the case. Therefore, if we are going to have some form of bill, then let's proceed to get what we can. That is the way Senator GORTON and I have proceeded on this bill.

I reemphasize to my colleagues that the White House has publicly committed to signing this bill if it remains in this form. That will grate on some of my colleagues. I have also had private assurances this bill will be signed if it is unamended. It is now up to the full Senate to decide if they want a campaign issue or if they want to pass a moderate, balanced, responsible reform bill that helps small business, product sellers, renters, lessors, as well as consumers, but which, in the end, is a fairly modest bill.

My colleagues know there are many of us who have worked very hard to gain a meaningful and fair reform. I have taken on this task, not because I am a lawyer, which I am not; not because I am heavily involved in following these matters in the trade press, but for a very simple reason. And that is I genuinely believe that in an international global economy, we have to keep up with the competition.

I just returned from 10 days in China with the President. It is just absolutely stunning to see what is going on there, the way that economy, in spite of the Asian troubles, is leaping ahead. This is true all over Asia. The Asia crisis is going to pass. It is going to be a couple of years. It is going to pass. They are going to come back. The Asian countries are predestined to be successful economically.

All the European Union nations have a single product liability law. I know, just as a matter of common sense, that when something is manufactured in a State, if it is an average State, 70 percent of the manufactured products will be exported on an interstate, if not international, basis. Therefore, State law, having had meaning at some point, has much less meaning when it comes to interstate commerce, much less international commerce. Again, it is not just a question of the laws, but it is also a question of are we being competitive or not. What is the added cost for liability insurance to our products as we compete in Europe and Japan now, for example, which has also taken on a single national uniform product liability law.

All of these things are extremely important. I also think having 50 States with separate laws is confusing. It means that people forum shop. They go to the State where they can get the best deal. I think it is true—I am not sure it is true this year—but it is true that last year, 85 percent of all of the punitive damages awarded in this country came out of Alabama, Texas, and California. That means that people knew where to go to get into a court system which would, in a sense, respond sympathetically. I don't think that is a wise way to carry on the business of our country or the commerce of our country.

All of these States having different laws is very, very complex and very difficult in allowing us to compete, and in fact, in even allowing us to adjudicate in product liability cases where people have, in fact, been injured and do, in fact, deserve payment and, in some cases, punitive damages.

The plain fact to this Senator's way of thinking is that our current system is simply unable to handle this problem in the modern marketplace and much less—or more so, really—in the global marketplace. States cannot deal with product liability problems that occur out of their borders. They can't do that.

In contrast to the circumstances that existed when our tort system was evolving, most goods, as I indicated, move outside of the State. That is important. When our tort system was evolving, the States could handle it. The States did handle it. Exporting from McDowell County, WV, to Braxton County, WV, was the way life went on some time ago. Now if you export to Ohio, much less the State of California, much less Indonesia, Japan, or China, you have to be much more sophisticated in the way you handle these problems. I think a Federal product liability law does make sense. That does not mean in all respects, and this bill does not do that in all respects, and I think that is an important point.

I was a member of the National Governors' Association for 8 years, and, like other companies, I was protective of States rights on all issues. But they have fairly consistently recognized the importance of establishing a Federal statute on product liability. I think that is very significant and deserves the consideration of my colleagues.

There is another bipartisan group called the American Legislative Exchange Council, a group of over 3,000 State legislators from all over the country. They have repeatedly urged Congress to enact Federal product liability reform—Federal product liability reform.

The bill we are proposing would address the problems in our product liability reform system which we know exist. It would provide increased predictability for business. It would improve the system for consumers at the same time. Is it gigantic on any side? No, because it is not a big bill. That we constantly bear in mind, because if it were a bigger bill, it would not get signed. We want to get the bill signed. This is not the ''nose under the tent'' theory. It simply would be nice to get some sort of uniform Federal standards on product liability going.

Under today's product liability system, companies have a disincentive to invent, to innovate. That means there are a lot of beneficial upgrades that are not done. People do not undertake certain kinds of biomedical research or pharmaceutical production or other things just because they fear the result of getting sued. It isn't really so much the number of suits. Those who oppose this Senator's position are always talking about, ''The Senator from West Virginia is always talking about the explosion of litigation.''

I have never talked about explosion of litigation. There is no explosion of litigation. But the psychological factor of a company sitting down and trying to decide whether it will go into a line of research and development which could lead to a cure for some disease, the present laws pull them back. Look at Viagra. It now has had about 300 deaths. I don't know what will happen with Viagra. Maybe they deserve to get sued, maybe they don't, I don't know. But you can see when people are looking at doing some kind of research that they want to pull back. In the case of Viagra, maybe they should have in the first place. Or maybe their warnings were not adequate.

I am not here to defend Viagra, as I was never here to defend Ford Pinto—that was always the example. Ford Pinto is undefendable. They should have been sued, they were sued, and that was the right thing to do.

Keeping products off the market that can do remarkable good for people is not in the American tradition; protecting consumers is in the American tradition. But we have always managed to find a balance where we both protect consumers and we move forward, strongly, in terms of innovation. We have always been the country of basic research. Other countries have been the countries of applied research. Basic research is not undertaken unless you can foresee it ending up someday in the marketplace. If you don't, then you don't do it.

We can help all of this by establishing a set of Federal rules for product liability cases. The compromise bill that Senator GORTON and I were able to work out with the White House, and which was introduced on June 25, creates a national framework for a more rational process for litigation regarding products, and products alone. If a manufacturer was, in fact, responsible for injury, it would remain accountable. If the seller of a product failed in its responsibility, it would be held accountable. The legislation is limited, meaningful, and signable.

I ask unanimous consent a section-by-section analysis of the bill appear in the RECORD at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. ROCKEFELLER. I will briefly run through a list of the bill's major provisions for my colleagues in the hope that some of them and some of their staff they work with are listening.

No. 1, the bill, as the Senator from Washington indicated, protects product sellers, renters, and lessors from suits that should be brought against manufacturers, not the product sellers, renters, or the lessors. Product sellers, renters, or lessors will be held liable

for their own negligence, make no mistake. For their own negligence they will be held accountable, or their failure to comply with express warranty, but not for the negligence that is beyond their own control. That comports, it seems to me, with common sense.

The product seller, renter, or lessor remains liable if the manufacturer cannot be brought into court. So, again, a consumer protection. Or they remain liable if the manufacturer is unable to pay judgments. All of this is in order to ensure that consumers retain a source of recovery. So, product sellers, renters, or lessors, et cetera, are protected, but they are not protected in the ultimate sense. That is, if manufacturers don't show up, are broke, can't pay, they—the consumer, injured consumer—will still get recovery.

No. 2, this bill will create a defense in a product liability case if a plaintiff is found to have been under the influence of illegal drugs or alcohol and was responsible for more than 50 percent of his or her own injuries. That has always struck me as a commonsense idea. We should help discourage abuse of illegal drugs or alcohol. Maybe it will, maybe it won't. But in any event, if people are responsible for their own use of alcohol or drugs and responsible for more than 50 percent of their injury, there should be an absolute defense against that.

No. 3, if a claimant's harm is attributable to the misuse or alteration of a product, defendant's liability will be reduced by whatever extent the harm is due to that misuse or alteration.

No. 4, consumers will have 2 full years to file a complaint from the time he or she discovers or should have discovered the harm and—this is new—the cause of the injury. A lot of States have the harm, the discovery of the harm, but there are not as many that have the cause. So, this is very, very strongly in favor of the consumer. This is particularly true—on the veterans committee, I have worked very hard on a variety of issues, including the Persian Gulf War Syndrome, all kinds of things in the world we are moving into, like toxic harm, et cetera, where the cause becomes much more important, because often things don't show up until much later.

No. 5, the bill's 18-year statute of repose applies to only durable goods in the workplace, and only in those situations which are covered by State worker compensation laws, and specifically excludes injuries caused by toxic harm. I just mentioned toxic harm. Well, toxic harm has no place, there is no remedy for it, in this bill. This means that only people who can recover for their injuries under State worker compensation laws are subject to the statute of repose. The statute of repose does not begin until after the product's express warranty expires. This provision is good for consumers, and, frankly, it is good for business. Businesses are relieved of unlimited liability, and consumers have a source of recovery.

No. 6, alternative dispute resolution—this is not the most potent part of the bill that I can imagine—we have an alternative dispute resolution that avoids protracted legal battles. That is encouraged under this bill. Either party can request alternative dispute resolution using existing State ADR procedures.

No. 7, one of the main provisions of this bill limits punitive damages for truly small businesses (under 25 employees with $5 million in revenue), individuals (with incomes of $500,000 or less), and local governments. It creates a Federal standard for awarding punitive damages which are reserved for the most egregious cases—clear and convincing. We simply take the Federal standard, uniform standard, and put it, frankly, where I think most people agree it should be. The bill sets the limit for these punitives for small businesses to $250,000, or two times the economic and noneconomic damages. This limit means that businesses will still have to pay punitives, should that be the judgment of the court, but they are less likely to be bankrupted by the cost of the penalty. This bill does not create punitive damages in States that do not permit punitive damages. That needs to be said clearly. If the State does not have it, this bill will not create it.

The bill includes a workplace safety incentive by affecting an employer's right to recover worker compensation benefits from a manufacturer whose product harms a worker if the employer's fault was a substantial cause of the injury.

Finally, Senator LIEBERMAN's biomaterials access assurance bill is the second title of product liability reform. I should say, in all due candor, this was something that was worked out between the White House, Senator LIEBERMAN, and other parties. I concentrated, as did Senator GORTON, on the products aspect of this. Senator LIEBERMAN did the biomaterial section of that and did a very good job. The White House has accepted it and it is part of the bill. This provision is designed to alleviate the shortage of certain biomaterials due to biomaterials suppliers who are increasingly unwilling—as those who would wish to do basic research—to supply products that produce very little revenue, but which would have high litigation costs attached to them. It should ensure the availability of life-saving and life-enhancing medical devices.

Specifically, the provision will protect suppliers of biomaterials by allowing them to seek early dismissal from claims against a medical device manufacturer, so long as the supplier did not manufacture or sell the device and met its contract requirements.

In sum, then, Mr. President, this bill, I think, is balanced in its treatment of consumers and business. Again, it is not a large bill. I think it should have strong, bipartisan support.

I believe in the need to develop a Federal-level framework. To me, the free flow of interstate commerce demands some form of a rational and fair approach. I think that involves, to a certain extent, Federal standards. We are, after all, in a global economy, and the world has changed almost totally in the last 10 years as regards to this product liability subject, and the need for the legislation is greater than ever.

I am not naive. As we head into this debate, there is long experience—over a decade—of filibusters and vetoes on products legislation. That is why I am so pleased that we have succeeded in negotiating a new bill with the President and his team. This bill has a firm commitment from the White House that it will be signed if it is unaltered. My colleagues do not like to hear the phrase ''if it is unaltered.'' The Senate does have a right to work its will, but if the Senate works its will and the White House is displeased, of course, there will be no bill. That is a choice the Senate will have to make.

So to hit the highlights again—one gives this speech only once during the course of debate—we would gain strong protections for product sellers, renters, lessors and suppliers; strong protections for biomaterials suppliers; uniform Federal statute of limitations and workplace durable goods statute of repose; uniform Federal rules on alcohol and drugs; uniform Federal rules on misuse or alteration; uniform Federal legal and evidentiary standard for punitive damages—the key word being ''uniform''—strong protections for small business from punitive damage awards; States' advances on joint and several liability determination would remain in place; more uniform rules of preemption (punitive damages and statute of repose changes). And then, as I indicated, there are incentives to resolve litigation, although they are not mighty in their nature. Nevertheless, they are there.

I am fully aware that some have reservations about the limited nature of the product liability compromise that we secured with the White House, believing that it does not go far enough. That is a view that in other places or at other times, perhaps, might have my concurrence. But we are not in other places and in other times; we are here and now. It is not my view that we will move forward toward enactment of anything if we make changes to this bill.

For the RECORD, let me acknowledge that we will face amendments that go beyond the compromise that Senator SLADE GORTON and I have now secured with the White House. That was true in the last attempt to move product liability reform, and it resulted in—guess what? A veto, and no law. Those expansions will not have my support. I will not support them, and they cannot be signed into law.

As I have stated many times before, I don't intend to support product liability reform provisions for the sake of doing it, so that I can say I did it. I want to see a law. I want to see something come from this process after all

these years. As the Senate proceeds with debate on product liability reform, I sincerely hope and believe that the majority leader will take advantage of what I consider to be virtually the last opportunity to enact limited Federal reform of our product liability laws in the foreseeable future.

Mr. President, that is all I have to say at the present time. I thank the Presiding Officer and yield the floor.

(EXHIBIT 1)

PRODUCT LIABILITY REFORM ACT OF 1998

SECTION-BY-SECTION SUMMARY

1. Short Title; Table of Contents.
2. Findings; Purposes.

TITLE I—PRODUCT LIABILITY REFORM

101. Definitions.
102. Applicability; Preemption.

The Act covers product liability actions brought in federal or state court on any theory for harm caused by a product, but excludes actions for: (i) commercial loss; (ii) negligent entrustment; (iii) negligence per se concerning firearms and ammunition; (iv) dram-shop; (v) harm caused by a tobacco product; or (vi) harm caused by a silicone breast implant.

State law is superseded only to the extent it applies to a matter covered by the Act. Matters not governed by the Act, including the standard of liability applicable to a manufacturer, continue to be governed by applicable federal or state law.

103. Liability Rules Applicable to Product Sellers, Renters, and Lessors

Product sellers, rentors, and lessors will be liable only for their own failures and misdeeds: a product seller, rentor or lessor is liable if the harm that is the subject of the action was caused by (i) his failure to exercise reasonable care, (ii) his intentional wrongdoing, or (iii) the product's failure to conform to his express warranty; failure to inspect the product will not constitute failure to exercise reasonable care if there was no opportunity to inspect the product or an inspection wouldn't have revealed the problem; product sellers are liable as manufacturers if the manufacturer is judgment-proof or not subject to service of process, in which case the statute of limitations is tolled until judgment is entered against the manufacturer; and rentors and lessors are not liable solely by reason of ownership.

104. Defense Based on Claimant's Use of Alcohol

It is a complete defense in a product liability action if the claimant was under the influence of drugs or alcohol and, as a result, was more than 50 percent responsible for the harm.

105. Misuse or Alteration.

Damages for which a defendant is otherwise liable under state or federal law are reduced in proportion to the percentage of harm caused by misuse or alteration of a product if such misuse or alteration was in violation of a manufacturer's warning or involved a risk that was or should have been known by an ordinary person who uses the product. Such damages are not reduced by the percentage of harm attributable to an employer who is immune from suit.

106. Statute of Limitations.

The Act creates a uniform, 2-year statute of limitations—product liability claims in all states must be filed within 2 years of the date the harm and the cause of the harm was, or reasonably should have been, discovered.

107. Statute of Repose for Durable Goods Used in a Trade or Business.

The Act creates a uniform 18-year statute of repose for harm (other than toxic harm) caused by durable workplace goods where the claimant has workers compensation coverage, with exceptions for general aviation, transportation of passengers for hire, and products with an express warranty of safety of life expectancy beyond 18 years.

108. Transitional Provision.

Claimants have a full year after enactment to bring a claim, regardless of the impact of the new federal statute of limitations or statute of repose.

109. Alternative Dispute Resolution.

Claimants and defendants are encouraged to use voluntary, non-binding ADR as available under state law.

110. Punitive Damages Reforms

Uniform Standard. The Act creates a uniform legal and evidentiary standard for punitive damages—the claimant must establish by clear and convincing evidence that the harm was the result of conduct carried out with a conscious, flagrant indifference to the rights or safety of others. Punitive damages are explicitly not created in states that do not otherwise allow them.

Bifurcation. Any party can request that punitive damages be determined in a separate proceeding and that evidence relevant only to the punitive damages determination not be introduced in the underlying action.

Small Business Limit. Punitive damages awards against small businesses may not exceed 2 times the amount of compensatory damages or $250,000, whichever is less. Small business is defined to cover entities with 25 or fewer employees and less than $5 million in annual revenue. Limitation also applies to local governments and individuals with net worth under $500,000.

111. Liability for Certain Claims Relating to Death.

Provisions regarding punitive damages will not apply for one year in states that, in wrongful death actions, permit recovery only for punitive damages.

112. Workers Compensation Subrogation

An employer or insurer may lose its lien against a judgment or settlement in a products liability case involving a workplace accident if the employer's conduct was a substantial factor in causing the claimant's harm—thereby providing an incentive for safer workplaces and ensuring workers receive full recovery for their injuries.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

A supplier of biomaterials (component or raw materials used in the manufacture of implantable devices) is permitted to seek early dismissal from claims unless he (i) manufactured the device; (ii) sold the device; or (iii) furnished materials that failed to meet contract requirements or specifications. In the event that the manufacturer or other responsible party is bankrupt or judgment-proof, a supplier will be brought back into the suit if there is evidence of his liability. Lawsuits involving silicone gel breast implants are expressly excluded.

TITLE III—LIMITATIONS ON APPLICABILITY; EFFECTIVE DATE

301. Federal Cause of Action Precluded.

No federal causes of action are created.

302. Effective Date.

The Act applies to all actions commenced on or after the date of enactment.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The distinguished Senator from South Carolina is recognized.

Mr. HOLLINGS. I thank the Chair. Mr. President, in a phrase, we ought to ''bail this buzzard.'' This bill ought to be killed outright. It is nothing more than a political farce. The distinguished Senator from West Virginia says 10 years; it is 20 years, really. What sustains a 20-year drive is nothing more than political polling. I was elected some 50 years ago, and if I have watched a dismaying trend, it is the lack of really addressing the true needs of a State or the Nation, and instead addressing the needs of the individual politician, as reflected in the political poll.

Now, Mr. President, right to the point. We all have heard Shakespeare's comment that Dick the butcher calls out in Henry VI, ''First, we must kill all the lawyers.'' That is in response to the intent of fomenting anarchy, imposing tyranny; and Dick the butcher, like Adolf Hitler himself, wanted to get rid of the lawyers first. Dick the butcher says, ''First, we must kill all the lawyers,'' because he knew that as long as you have lawyers standing for individual rights, you cannot have anarchy; you cannot have tyranny. But ask people about lawyers—until they need one; just like doctors, until they need one—and they will say get rid of all the lawyers. And over the 20-year period, I have kept my good friend Victor Schwartz in business. Maybe he will go out of business now with this jury-built nonsense called an amendment that we only got on yesterday, and I haven't had a chance—that is why I have been scurrying around here at the desk—to pick up the thrust of this latest assault.

But back to the initial point—we have been taken over by the pollsters.

Only the week before last, the House of Representatives, the most central organ of our representative government, the body that controls the purse strings, voted overwhelmingly to do away with tax revenues, some $970 billion—just gut the source to pay the bills—that we are going to spend and spend and spend. They use substitutes now of borrowing from yourself. We passed section 13301 of the Budget Act to forbid it. They disregard it regularly, borrowing so much from Social Security, the highway trust fund, the airport trust fund, the civil service pension fund, the military retirees pension fund, and the Federal Financing Bank—at this point over $111 billion—to bring about talks of surplus.

In fact, this year we are spending over $111 billion more than we are taking in—a deficit, if you please. But with all of the jargon around and the news media coverage that is supposed to educate and illuminate and keep us to the truth, politicians have joined in the conspiracy. They babble ''surplus, surplus''— everywhere they call ''surplus.'' Well, there isn't any surplus.

Of course, this bill here is intended strictly to get at the lawyers—not as the distinguished gentleman used the expression of ''in the American tradition.'' ''In the American tradition,'' Heavens above. The American tradition, Mr. President, has been for the

States to regulate our torts. They have done so commendably. There isn't any question. All the farcical preambles—they try to really get away from the preambles and just some dribble about interstate commerce. I use the expression ''dribble'' and otherwise, because we know otherwise.

The reality, heavens above, is that we have a great economy and booming small businesses. The National Federation of Independent Businesses says small businesses are having the best of times. My staff completed a Lexis-Nexis search for small businesses that couldn't operate on account of product liability. You know what—they couldn't find any large and serious cases against small businesses. But I presume during the debate this legislation's supporters will bring us some, and we will see how many they bring.

The fact remains that there isn't a problem. But there is a political interest. There is a political problem. Oh, yes. We have to say we did something—we did something to get rid of the lawyers. We showed those lawyers. And, as a result, they not only voted away the tax system—now here on the Senate side for a nonproblem they come up and talk about the American tradition whereby they ask, and the gentleman says, ''There goes that trial lawyer crowd.'' You are right. They are the ones who have really been keeping the system honest. They haven't succeeded but in 27 percent of the product liability cases. But they still, when they have the clients who have been injured, try to keep the system honest. And what happens is that we have the States here—not only the trial lawyers but we have the States—and the American Bar Association.

So I am very proud to stand here with the State legislature. Don't tell me about the Governors. I have been one of those, just like the Senator from West Virginia. And when we had Democratic Governors, then they voted against this thing right on down the line. Now the Republican Governors, the last time they got together and even bothered to take action was 6 or 7 years ago. They are not really bothered by it. But the State legislatures are bothered by it.

We have an update here of June 18, less than a month ago. Here is what they really said when this was proposed, again on this particular bill, before with the amendment, which is to be introduced, I take it, later on. This is from the National Conference of State Legislatures:

As you know, product liability legislation, in some form, may come to the Senate floor before Congress adjourns in November. I urge you, on behalf of the National Conference of State Legislatures, to vote against any such bill, for the simple reason that this is an issue best resolved by state legislatures.

A good deal of lip service is given today to the advantages of our constitutional system of federalism and to the advantages of devolving authority to the states. But, from the point of view of state legislators, this rhetoric belies the reality of an accelerating trend toward concentration of power in Washington. Every year, Congress passes more laws and federal agencies adopt more rules that preempt state authority. Little consideration is given to the cumulative effect of preemption piled upon preemption. Little thought is given to the shrinking policy jurisdiction of state legislatures.

Moreover, little consideration is given to whether state legislatures are responsibly exercising their authority. The threat to preempt state product liability law, for example, comes at a time when state legislatures have been particularly active in passing reform bills. As the attached article from the June issue of The States' Advocate shows, over the past ten years, thirty-three product liability reform bills have been enacted in the states. In addition, states have been reforming their tort law generally. As of December 1996, 34 states had revised their rules of joint and several liability and 31 had acted to curb punitive damages.

Just as the preemption contemplated by a national products law is unprecedented, so the intrusion on the operation of state courts is both unprecedented and disturbing. National products standards would be grafted onto state law. In a sense, Congress would act as a state legislature to amend selected elements of state law, thus blurring the lines of political accountability in ways that raise several Tenth Amendment issues. Given the Supreme Court's recent interpretation of the Tenth Amendment in Printz v. United States, the legislation might even be unconstitutional.

Our constitutional tradition of federalism deserves more than lip service. It's time to vote ''no'' on product liability and similar proposals to unjustifiably preempt state law.

That is from the president of the conference and the president-elect of the National Conference of State Legislatures, which now has been updated in a letter to this Senator dated June 18, 1998.

DEAR SENATOR HOLLINGS: I write on behalf of the National Conference of State Legislatures in opposition to S. 648, a bill that would supplant state liability laws with federal standards.

For the National Conference of State Legislatures, this is a simple matter of federalism and states' rights. Tort reform is an issue for state legislatures, not Congress. There is no precedent for such a federal intrusion into such an important area of civil law. Moreover, we regard it as highly inappropriate and perhaps unconstitutional for the state courts to be commandeered as instruments of federal policy in the fashion contemplated by S. 648.

The states have made considerable progress in reforming their state law, including product liability law, over the past decade. State legislatures are in a good position to balance the needs of the business community and those of consumers, not just in the abstract but in a way that reflects local values and local economic conditions. This is as the Founders intended it when they established a federal republic rather than a unitary state.

The issue then is not finding the right compromise between consumer and business interests in crafting the language of S. 648. The issue is whether we will take a giant step toward nationalizing the civil law, to the detriment of our constitutional system of Federalism. Again, please oppose S. 648.

That is from the Conference of State Legislatures, which, of course, is once again over this 20-year period bolstered by the American Bar Association in a letter dated July 1, 1998.

DEAR SENATOR: We understand that on July 7, broad federal product liability legislation will be the subject of a cloture vote on the Senate floor. I am writing to you to express the American Bar Association's opposition to S. 648, the bill reported by the Commerce Committee, and S. 2236, the compromise proposal introduced by Senators GORTON and ROCKEFELLER. The ABA believes that improvements in the tort liability system should continue to be implemented at the state level and not be preempted by broad Federal law.

S. 648 and S. 2236, which would federalize portions of tort law, would deprive consumers in the United States of the guidance of the well-developed product liability laws of their individual states. This legislation would also deprive the states of their traditional flexibility to refine carefully the product liability laws through their state courts and state legislatures.

The ABA has worked extensively to improve our civil justice system, including developing extensive recommendations on punitive damages and on other aspects of the tort liability system for consideration at the state level. Broad federal product liability legislation, however, would constitute an unwise and unnecessary intrusion of major proportion on the long-standing authority of the states to promulgate tort law. Such preemption would cause the whole body of state tort law to become unsettled and create new complexities for the federal system. Unequal results would occur when product liability litigation is combined with other types of law that have differing rules of law. An example of this would be a situation where a product liability claim is joined with a medical malpractice claim. If state tort laws differ from the federal law in areas such as caps on punitive damages, conflicts and uncertainly would likely result; one defendant in an action could well be treated entirely different than another. Having one set of rules to try product liability cases and another set of rules to try other tort cases is not consistent with the sound and equitable administration of justice.

The ABA opposes the product seller provisions of section 103 of S. 648 and S. 2236 because those provisions remove the motivation of the only party with direct contact with the consumer, the seller, to ensure that the shelves in American businesses are stocked only with safe products. Seller liability is an effective way of maintaining and improving product safety. Manufacturers traditionally rely on sellers to market their products. Through their purchasing and marketing power, sellers have influenced manufacturers to design and produce safer consumer goods.

Ambiguity in the language of S. 648 and S. 2236 may result in unintentionally eliminating grounds for liability which promote safety. For example, the two bills expressly eliminate a product seller's liability for breach of warranty except for breach of express warranties. This Uniform Commercial Code, long regarded as a reasonable, balanced law, holds sellers responsible for breach of implied warranties as well. By their vague and ambiguous language, S. 648 and S. 2236 may result in preempting these long established grounds of liability.

We urge you to vote no on federal product liability legislation as it is an unwise and unnecessary intrusion on the long-standing authority of the states to promulgate tort law.

Now, Mr. President, we all know the majority crowd and how they came to power in 1995. The election in 1994 said that Contract sounds pretty good, and

one of the big things about that Contract was regulation, regulation, regulation. They wanted to diminish regulation. Well, heavens above, as they said in the American Bar Association letter, you have two bills expressly eliminating a product seller's liability and thereby coming and taking the Uniform Commercial Code and standing it on its head.

So we surgically are running into the Uniform Commercial Code, tried and true at the State level, and you have the most complex regulatory mess you have ever seen. All in the attempt to diminish litigation, they compound it. Oh, yes, all in essence to protect the 10th amendment.

The first vote we had was the particular vote with respect to unfunded mandates upon the States, and what-have-you. And here is an unfunded mandate, constitutional mandate, if you please, because they don't give a Federal cause of action. They come with an unfunded mandate on the States and say we know best up here in the Congress in the light of the most dynamic economy we have ever seen.

Where is Mr. Greenspan's statement.

Federal Reserve Board Chairman Alan Greenspan offered a decidedly upbeat assessment of the Nation's economic health yesterday—

This is dated June 11—

pronouncing the current expansion ''as impressive as any I have witnessed in nearly half a century of daily operation.''

Where is the small business response? Let's get the rebound. This is another quote.

''The rebound in the optimism index, coupled with other national economic indicators, suggests economic growth for this year will be a lot closer to last year's level than many have predicted,'' said National Federation of Independent Business Foundation Chief Economist William Dunkelberg.

Far from worrying the expansion has just about played itself out, more and more small business owners feel the best is yet to come.

Dunkelberg noted that, ''Small business capital investment remains exceptionally strong.''

On and on, on and on, Mr. President. There is no foundation for claims that trial lawyers are undermining small business entrepreneurs. That is why I say this is a political farce responding to the political poll. It is not responding to the needs of small business. It is not responding to the needs of the States, their inability to handle product liability law. It is in response to the needs of the political poll and the drive of trying to get rid of trial by jury and lawyers.

They know, in business, they are in their heyday here, and they are onto a real binge here, having a wonderful time—that they can come in now with this particular Congress ready to do away with the income tax—let's do away with the lawyers and trial by jury. Whoopee. They get Gallup at the White House, and the White House follows the polls too, so they get together on this jury-built thing that is really an embarrassment for a lawyer to read.

They have a statute of repose in here for the individual but not for the business, so the individual injured is barred by the statute of repose, but the business he is working for, they can sue for the particular product and get a verdict. I never heard of a more selfish instrument than that presented here, just crassly selfish, trying to do away with trial by juries, the States and lawyers. Pell-mell, in a rush, this body now just writes in such things.

And what about tobacco? Here we have been debating for a month one of the most injurious products that everybody agrees upon. Do you know what? This bill says exempt tobacco. The unmitigated gall of the White House and these authors that write this thing—it is just unforgivable to come forth here, now, after 4 weeks and everybody charged up, we are going to do something about the victims of tobacco; how it is habit-forming and everything else of that kind, so many deaths, more than heart attacks, more than cancer, more than all the rest, the injury—the unmitigated gall to come and have a product liability that exempts tobacco. You would never get my name on such a charade, a political farce as this, all in the name of the political poll. Kill all the lawyers, that is right. Just kill all the lawyers. So we really got it.

Small businesses are not asking for it. The States are not asking for it. They are trying to force Federal law upon the States over their objections. I was just amazed when the distinguished Senator from West Virginia started talking about competition with Japan. I cannot keep them out of my State. They are running all over me. We just broke ground for Honda at Timmonsville. We just broke ground for another division of Fuji photographic equipment and the little speed cameras. They make 60,000 a day. This is the fourth increment of Fuji, a $1 billion investment there. There are 58 Japanese plants, 100 German plants—foreign competition? They are buying us up. Yet they find out we cannot compete with the foreigners.

I make a habit of visiting these industries. We shake hands, of course, with all, if they will allow us in the plant. I went through the GE plant.

Incidentally, they think we are nothing but textiles. Tell them keep on thinking. We lost, since NAFTA, 24,000 textile and apparel jobs in South Carolina. Little South Carolina lost 24,000 textile and apparel jobs. That is from the National Bureau of Labor Statistics as of the end of April this year. And we have had, in May-June, several other closings. So that is the April figure by the Bureau of Labor Statistics. We were proud of those jobs. We hate to lose them. But we have these other industries here and they are exporting like gangbusters.

I was in that GE plant. I would say of those gas turbines, almost 100 percent are exported. One turbine was ready for delivery at Riyadh, Saudi Arabia; another one was ready for delivery to Tokyo, Japan. The same is true for all of these Torrington and other industries. They are in the context of manufacture.

I said do you have any problem here with product liability? They almost—well, at Bosch they got insulted. ''What do you mean, product liability?'' They went over there and showed me the antilock brake that they got a contract for from Mercedes, Toyota, and all of General Motors. They said, ''Here is a number. We know it immediately. We never have had product liability. We practice safety, Senator.'' As if I had insulted them with the question.

We have a result from these wonderful trial lawyers that nobody wants to talk about. We have the safest society in the entire world. Let's talk about competitiveness. We have Europe. The Pacific Rim—economically, competitively on the ropes. And here they want to put in a bill to compete with Japan, and Japan is coming here and saying we love it in America. The other States have always had Japanese plants coming. I have yet to have one of them say I can't come because of your product liability and the litigation explosion and all, torts. What is all these silly expressions they have here in these preambles? Here is what they have been referring to ever since last year: that the civil justice system is overcrowded, sluggish, and costly.

Mr. President, what is the actual fact? The National Center for State Courts, on State civil filings, their most recent statistics show that product liability cases constitute only 4 percent of all State tort filings, and a mere 36/100 of 1 percent of all civil cases. Explosion? Come on. Where is the support? They just use this language around here that the distinguished Senator from Washington put in, these preambles here, ''excessive, unpredictable and often arbitrary damage awards.''

What does the Justice Department say here? In a recent report, they validate all the studies and the witnesses who appeared before our committees, and said, ''Juries nationwide have become much tougher on plaintiffs.'' According to the Department of Justice report, ''Plaintiffs prevailed in only 27 percent of the product liability cases that were filed in Federal court between 1994 and 1995.''

In 1992, Professors James Henderson, a supporter of tort reform, and Theodore Eisenberg, of Cornell University, released a study, ''Inside the Quiet Revolution in Products Liability,'' which also found ''notable declines in the number of product liability cases filed, as well as significant decreases in the size of awards.'' The study concludes that:

By most measures, product liability has returned to where it was at the beginning of the decade.

The study confirmed Professors Henderson and Eisenberg's findings in an earlier study which found:

A quiet revolution away from extending the boundaries of products liability and toward placing significant limitations on plaintiffs' rights to recover in tort for product-related injuries.

And then the other preamble about all the punitive damages.

There is another study. The American Bar Foundation conducted a nationwide study overseen by Dr. Steven Daniels of 25,000 civil jury awards, and it found that punitive damages were only awarded in 4.9 percent of the cases reviewed. Can you imagine that, only 4.9 percent?

He stated that the debate over punitive damages ''changed in the eighties as the part of an intense, well-organized and well-financed political campaign by interest groups seeking fundamental reforms in the civil justice system benefiting themselves.''

Did you hear that?—A ''political campaign by interest groups.''

Then the American Bar Foundation went on to state that this ''politicization of the punitive damages debate makes the debate more emotional and manipulative and less reasoned. The reformers appeal to emotions, fear and anxiety in this political effort, while avoiding reason and rational discourse.''

He concluded that punitive damages were not routinely awarded, were awarded in modest amounts, were awarded more often in financial and property harm cases than in product liability cases, which, of course, is like Pennzoil suing Texaco with a $12 billion award in Texas, which was more than all the oil product liability verdicts given cumulatively since the beginning of product liability law. Just add them all up, and you will never get to $12 billion. But there it goes from the American Bar on down.

I think there was one particular study that showed there were only 350 punitive damage awards. I want to find out the exact period of time. This is Professor Rustid of the Suffolk University Law School and Professor Thomas Kearney of Northeastern University. The Supreme Court recently referred to this report. This is our U.S. Supreme Court:

The most exhaustive study of punitive damages . . .

Professors Rustid and Kearney reviewed all product liability awards from 1965 to 1990 in both State and Federal courts. During that time, punitive damages were awarded in only 355 cases—355 cases. That is what we find, as a matter of Federal interest, to violate the tenth amendment, to violate the Republican contract of trying to get Government back to the people, trying to preserve and not have unfunded mandates upon the States.

We can go on and on, Mr. President. But what really has happened—and it is why this Senator is somewhat disarmed because I have seen it occur over the past 20 years—Mr. Victor Schwartz with the National Association of Manufacturers has buddied up now with the Chamber of Commerce, my friend, Tom Donahue. He is a fighter, and I respect him. Also, the Business Roundtable and the Conference Board, they seek out the candidates before they even get here.

They say, ''We would like to help you, but are you for tort reform?''

''Of course.''

With respect to the general expression ''tort reform'' and ''torts''—''Yeah, yeah, yeah, I'm for tort reform.'' So you see them marching like sheep up to the voting table down in the well voting, by gosh, to stop debate on one of the most heinous bills that has ever been presented in the U.S. Senate, because politically they remember their campaigns and politically they were asked and politically they answered, ''Yes, I'm for reform,'' and they know that if they don't vote that way, some opponent is going to come and say, ''Here is what you said and then flip-flopped.''

They didn't even know the facts of the case. In essence, the jury is fixed. The jury is fixed, Mr. President, before I can get to them, before the National Conference of State Legislatures can get to them, before the American Bar Association can get to them, before the Supreme Court citing the most exhaustive study on punitive damages can get to them.

There are no facts to support this particular initiative. This is just jerry-built from the word go. They say, ''Let's remove the seller from strict liability on toxic''—by the way, they have some very dangerous language in here, because some of the lawyers know how to word this language to get rid of the Dalkon Shield cases.

Let me quote this particular finding:

The difficulty in using the toxic nature of a product as a means of statutorily differentiating between products covered by the statute of repose is highlighted by the following scenario that occurred in an asbestos case brought against Owens-Corning Fiberglas Corp. In their opening statement, the Owens-Corning Fiberglas Corp.'s counsel pronounced that their product, Kaylo [K-A-Y-L-O, Kaylo] an insulation product containing 1.5 percent amosite and chrysotile [C-H-R-Y-S-O-T-I-L-E] asbestos was not toxic. OC's counsel relied on the 1964 article in the Journal of the American Medical Association that stated that asbestos was not considered toxic because it does not produce systemic poisoning.

I can tell you right now, that is trying to get rid of the asbestosis cases and the Dalkon Shield cases, when they give to women $250,000 for the stay-at-home mom. Where have I heard that expression, the ''stay-at-home mom''? Oh, they were so disturbed on tobacco for the stay-at-home mom who doesn't economically win anything. I never heard of the husband paying the wife a salary. Maybe that happens somewhere else. It doesn't happen in South Carolina, I can tell you that.

So there is no economic loss. You can come in with a Dalkon Shield case, be injured for life, never be able to reproduce, never have that family, and buy it off for $250,000. That is easy pickings, easy pickings.

Let me tell you, Mr. President, this thing is a dangerous measure, as well as a political farce. When they come out with, for example, punitive damages, I go back to that 1978 case. I remind my colleagues of the wonderful result of punitive damages.

In 1978, Mr. Mark Robinson in San Diego brought the Pinto case against Ford Motor Co. The verdict—the Presiding Officer is a good trial lawyer—the verdict, I think, was $3.5 million actual damages and $125 million punitive damages.

Now, Mr. Robinson had not been able to collect a red cent of that $125 million, but, boy, oh, boy, hasn't that brought safety practices galore, saving lives, saving injury galore over the past 20 years.

They had a recall; it was on the radio this morning; Ford Motor just recalled—I know they recalled about 1.5 million about 2 months ago because the wheels were coming off, but they had another recall, here, of how many vehicles involved in this—another 11,200 recalled yesterday. I remember Chrysler, at the end of the year, recalled 1.5 million hatchbacks. We will get in the debate the National Safety Transportation Administration's statistical recalls, but recall upon recall upon recall didn't impoverish the businesses but it sure made safer this society in which we live.

I came when we were talking about toxic fumes of the Love Canal up there in Buffalo, NY. We put in the Environmental Protection Agency, the impact statements, and they are a matter of habit now. We look environmentally, and we have the dump costs and everything else that has to take care of in this Congress, I hope before we leave. But it has been a wonderful result, so that environmentally we know now that we are not inhaling the fumes and otherwise on account of the Environmental Protection Agency.

We then had the little babies burning up in the cribs—flammable blankets. Since my time, we have instituted a Consumer Product Safety Commission. At one time, J.C. Penney's took me up to their safety lab in New York and showed how, not just blankets, but toys and the various products that they sold, they were testing in this particular lab to make sure, so they put in safety ahead of giving it to the seller and otherwise. So we got the Consumer Product Safety Commission.

And right to tobacco. Of course, they haven't won a class action. That was an individual suit down in Florida; all the rest have been turned aside. So when they whine on the floor of the U.S. Senate, ''Why could you give this particular industry immunity from liability? Why are we doing this?''—because the jurors of America have given them, time and time and time again, immunity. They say, look, the Congress, in its wisdom, has required ''smoking is dangerous to your health''

notification on every one of those packs of cigarettes. It is your assumption of risk. You could have stopped. More people have stopped smoking than have started smoking in America this minute.

So the jurors, in their wisdom—but, oh, no, they want to exempt tobacco on the one hand here, and the cases brought by the attorneys general and the trial lawyers have done more to save people from cancer than Dr. Koop and Dr. Kessler and the American Cancer Society for the last 30 years that I have been up here. They really have gotten us aware, and more people have stopped smoking, like I say, than are smoking this minute in the United States of America.

So when we go to the hearings where we used to have an ashtray and the room was clouded with smoke and my distinguished beloved former chairman, the Senator from Washington, Senator Magnuson, with that cigar right there—we don't have that anymore. But we don't have it not on account of Dr. Koop and Dr. Kessler but on account of the trial lawyers. They are the ones who got into the records. They are the ones bringing the truth out. They are the ones bringing the class action suits, bringing about settlements in Florida, Mississippi, Texas, and Minnesota, and they continue to bring the cases.

They had an orderly process to end all litigation and get a sweetheart deal in the interest of society whereby they would advertise negatively—we can't control their advertising under the first amendment, but they agreed to it—whereby they would have a lookback provision whereby we could come in and control that and fine them if they didn't control it. But instead, that case now is temporarily on hold—tobacco—and these particular authors want to make sure that tobacco, the most injurious of products, is exempted from this so-called product liability bill.

Mr. FAIRCLOTH. Mr. President, I rise in strong support of this bill, and it is long overdue. In a way, this is a tax cut bill, because it will cut the ''trial lawyer tax'' often referred to as the ''tort tax.''

The ''trial lawyer tax'' is equivalent to the amount of liability insurance that people pay to protect themselves from trial lawyers. They pay it because no one is safe anymore.

We're looking at product liability cases here, but the problem extends far beyond product liability, and I remain committed to broad civil justice reform.

If any Senators think this narrow bill is sufficient, let me mention a few recent verdicts from the tort capital of the United States, New York City. I am convinced that Senators will think twice before they put civil justice reform on the back burner after they hear these horror stories.

A mugger on the New York City subway who was preying on the elderly became a multimillionaire when a Manhattan jury awarded him $4.3 million for being shot as he fled from the scene of a crime. A Bronx jury gave $500,000 to a woman who broke her toe in a pothole. Another Bronx jury awarded $6 million to the family of a drunk who fell in front of a subway train after the jury found the drunk wholly without fault. Another jury in a medical malpractice case awarded $27 million to an injured patient and another $6 million to the members of his family—even though they hadn't even sued.

Mr. President, let me return to the subject at hand, which is limited product liability reform. The tort system is really a ''trial lawyer tax'' that costs American consumers more than $132 billion per year.

This is a 125 percent increase over the past 10 years. In fact, between 1930 and 1994, tort costs grew four times faster than the growth rate of the economy.

This tort tax costs the average American consumer $616 per year. The civil justice system, in effect, deputizes the trial lawyers as tax collectors. Further, because they often sue under a contingent fee arrangement, the trial lawyers are bounty hunters.

They all want to bag the big case—the trophy case—and raid those ''deep pockets.''

The U.S. tort system is the most expensive in the world and costs 2.2 percent of gross domestic product.

This is a jobs issue, Mr. President, because tort reform is good for economic development. The evidence is clear: when States pass tort reform, productivity increases, and employment rises. Let me offer a few examples of the ''trial lawyer tax'' in action. A heart pacemaker costs $18,000; $3,000 of that is the ''trial lawyer tax.'' A motorized wheelchair averages $1,000; $170 of that is the ''trial lawyer tax.'' A doctor's fee for removing tonsils averages $578; $191 of that is the ''trial lawyer tax.'' A two-day maternity stay averages $3,367; $500 is the ''trial lawyer tax.''

These are the costs of the ''trial lawyer tax.'' Now let's contrast that with the benefits of product liability reform.

Before federal legislation was enacted, production of single engine aircraft had fallen 95 percent from the previous highs of the late 1970s.

Plants were closed and more than 100,000 jobs were lost. In 1986, Cessna Aircraft Company discontinued production of the single engine aircraft. However, Cessna pledged that it would resume production if Congress passed product liability legislation to protect the general aviation industry from the predatory practices of the trial lawyers.

When the Congress finally passed the General Aviation Revitalization Act, Cessna invested $55 million in facilities and equipment, and it now employs 650 people and plans to double that number.

That is the choice, Mr. President, jobs or lawsuits. Money for working Americans or rapacious trial lawyers. Productivity or litigation.

I'll side with working Americans, not fat-cat trial lawyers, and I hope the Senate will invoke cloture on this landmark bill.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SESSIONS). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to proceed for a period of up to 15 minutes as in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

JUVENILE CRIME

Mr. BROWNBACK. Mr. President, Today, Senator LIEBERMAN and I will host a policy forum entitled ''The Young and the Violent: What is Behind the Spread of Juvenile Violence—and What Can Be Done About It?''

The horror of the killings in Jonesboro, Arkansas; Paducah, Kentucky; Edinboro, Pennsylvania, Springfield, Oregon; Fayetteville, Tennessee, among other places, shattered forever the illusion that ''it can't happen here.'' The young and the violent are found in small towns as well as big cities, and their numbers, as well as their crimes, are growing.

We will hear today from some of the most respected criminologists in the nation—as well as those who are working to transform their communities and solve their problems locally. Their insights on the causes, catalysts and consequences of the spread of juvenile crime are helpful in grappling with the most important questions of our time, namely: why has crime risen and civility declined? How have we failed to civilize our children? What is happening to our national character?

Make no mistake, our culture has changed radically over the past few decades. Since the mid-1960s, violent juvenile crime has increased more than 500 percent. And even though teen violence has dropped over the past three years, teen murders have jumped dramatically since even the early 1980s—and there is reason to believe that they will continue to increase.

Not only have the rates and number of juvenile crimes increased, but they have changed in nature as well. Juvenile crime has grown increasingly predatory—where teens kill strangers for the most trivial of matters—a jacket, or a dirty look—or even worse, for sport.

Moreover, the young and the violent are found in rural and suburban areas, as well as the inner cities. Gangs and guns are ever more visible in our schools. Fistfights begin to seem